

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2009-053747

10/05/2010

HON. CAREY SNYDER HYATT

CLERK OF THE COURT

C. Brown

Deputy

IN RE THE MATTER OF  
JIMMY R LOPEZ

GENE R STRATFORD

AND

LAURA E BATTAGLIA

LAURA E BATTAGLIA  
28430 N 51ST ST  
CAVE CREEK AZ 85331

JUDGE GORDON  
JUDGE HILLIARD

ORDER

This Court is in receipt of several Motions filed by Respondent, which among other issues involve allegations regarding a request for a Change of Judge/Jurisdiction for Cause, filed respectively on September 13, 2010, September 17, 2010, and a third pleading dated October 5, 2010, all of which have been referred to this division for disposition in accordance with A.R.S. § 12-409(A).

Pursuant to Rule 42(f)(2)(D), if a party makes proper service of an affidavit that meets the requirements of A.R.S. § 12-409(A) seeking to change the assigned judge for cause, the matter must be heard by another judge and the issue decided by a preponderance of the evidence. However, before the court sets this matter for an evidentiary hearing to resolve disputed issues on the alleged bias, prejudice, or interest of the assigned judge, the court must first determine whether or not the affidavit as a matter of law states grounds that, if proven, would justify disqualification under A.R.S. § 12-409. *See, e.g. Mervyn's v. Superior Court*, 179 Ariz. 359, 361, 879 P.2d 367, 369 (App. 1994).

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In *Smith v. Smith*, 115 Ariz. 299, 564 P.2d 1266 (App. 1977), the Arizona Court of Appeals recognized that, “the bias and prejudice necessary to disqualify a judge must arise from an extra-judicial source and not from what the judge has done in his participation in the case. *United States v. Grinnel Corp.*, 384 U.S. 563, 86 S.Ct. 1698, 16 L.Ed 2d 778 (1966).” *Id.* At 303.

This Court has reviewed all of the allegations made by Respondent in support of removing the assigned judge, and finds that none of the allegations presented are supported by an affidavit alleging bias, prejudice or interest of the assigned judicial officer arising from an extra-judicial source. The allegations presented involve the judge’s participation in the case, and are insufficient as a matter of law to proceed with an evidentiary hearing on this matter. Accordingly,

IT IS ORDERED denying all three Motions for Change of Judge/Jurisdiction for Cause filed by Respondent respectively on September 13, 2010, September 17, 2010, and dated October 5, 2010, and reassigning this case to Judge Michael D. Gordon for all further proceedings, including the issues regarding Respondent’s Motion for New Trial, which were set forth within the various Motions for Change of Judge/Jurisdiction for Cause.

//Hon. Carey Snyder Hyatt//

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Carey Snyder Hyatt  
Family Court Presiding Judge

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.